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Dwaine L. Chambers
General Counsel

Grant Herndon
Assistant General Counsel

Stacy L. Inman
Assistant General Counsel

Peter C. Carton
Senior Counsel

William A. Hornback

Patricia T. Castle

Christopher P. Burger

Alan B. Harris

Carol J. Grogan

Kathleen R. LaMay

Christopher W. Hine

Counsel

Carl B. A. Lange III
Director of Labor Relations

Phil Lancaster
Bargaining Specialist

**RE: APPEAL AND REQUEST FOR REVIEW OF FUNDING COMMITMENT
ADJUSTMENT LETTERS DATED NOVEMBER 2, 2006 BY DELANO
JOINT UNION HIGH SCHOOL DISTRICT**

CC Docket Numbers: 96-45 and 02-6
Billed Entity Name: Delano Joint Union High School District
Billed Entity Number: 143847
Form 471 App. Number: 319862
FCC Registration Number: 0012293866
Funding Year: 2002
Applicant's Form Identifier: DHS-Y5-3
Commitment Adjustment
Letter Date: November 2, 2006
Amount Being Appealed: \$3,502,353.06
Funding Request Nos: See Attached Exhibit 1

Designated Contact Person For This Appeal

Name: William A. Hornback, Esq.
Company: Schools Legal Service
Address: 1300 17th Street
Post Office Box 2445
Bakersfield, CA 93303
Telephone: 661.636.4830
Facsimile: 661.636.4843
Email: sls@kern.org

To Whom It May Concern:

This letter constitutes the Request for Review, and Appeal, by the Delano Joint Union High School District (hereinafter District) of the above-referenced Commitment Adjustment Letters from the Universal Service Administrative Company/Schools & Libraries Division (hereinafter USAC/SLD) against the District and related to various service providers to the District for funding year 2002, all of which are dated November 2, 2006. A complete listing of the service providers, report numbers, disputed amounts, and other information is attached for convenience as Exhibit 1. True and correct copies of the letters which are the subject of the Request for Review and Appeal are attached as Exhibit 2.

1300 17th Street, 7th Floor 93301 • Mailing Address: P.O. Box 2445 • Bakersfield, California 93303

661.636.4830 • FAX: 661.636.4843 • e-mail: sls@kern.org

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Summary of Issues:

Each of the Funding Commitment Adjustment Reports involve the same central issue, which is an allegation that the District's bidding process was tainted by reason of the District's listing as a "contact person" a technology consultant who ultimately received a contract from the District in the same year.

The issue in each of the referenced Reports, regardless of the service provider or contract mentioned in the Report, is the same. As will be shown, the consultant was NOT a consultant for the year in question, but was only a vendor seeking additional work from the District through the funding year 2002 bidding process.¹ The consultant did NOT participate in any way in making the contract awards, including having NO involvement in preparation, dissemination, or review of bid packages or bidders' submissions received by the District, and was temporarily listed on only one of District's four RFP's for funding year 2002, and was listed only because of a clerical mistake, one that was fixed during the bidding process. The factual background is supported by the Declaration of Bonnie Armendariz, District's IT Director, attached hereto as Exhibit 3.

All of this information was offered to the KPMG auditors while they were still at the District; however, the auditors rejected it, indicating they did not care about the true state of facts.

Statement of Issue:

The Funding Commitment Adjustment Letters contain 26 individual "Reports," each containing the following charging language:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of an audit it was determined that the applicant listed an Inter'L employee as a contact person on its request for proposals and directed bidders to provide a copy of their bid to that individual. The applicant cited Form [sic] 470 # 428350000384140 and indicated in Block 2 Item 10 that they had an RFP and that it was available on the WEB or via the contact person in Block 1 Item 6. Inter'L Corporation was selected a service provider pursuant to the posting of this Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. By having Inter'L Corporation's employee listed as a contact person on its Request for Proposal, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder.

¹ Wayne Wheeler was a vendor who also provided equipment maintenance services on some existing District equipment.

This impaired the applicant's ability to hold a fair and open competitive bidding process and FCC rules consider this Form 470 to be tainted. All Funding Requests that relate to this Form 470 are required to be denied because the Form 470 is tainted. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds.

As to Reports involving Inter'L, the following additional language is added to the above-referenced charging language:

USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.

This appeal challenges the suggestion a conflict of interest existed that "tainted" the District's bidding process for the contract, and especially as having "tainted" the bidding process for the entire year. Principally, this appeal and challenge rests on the actual facts, law, and on the flawed audit process that brought the District to this appeal.

A temporary clerical error was made in falsely listing Inter'L/Wayne Wheeler on one equipment RFP:

The charging Reports contain the following language:

...the applicant listed an Inter'L employee as a contact person on its request for proposals and directed bidders to provide a copy of their bid to that individual.

The actual facts are that the District had four RFP packages, and the Inter'L employee, Wayne Wheeler, was mistakenly listed on only one of those RFP packages. That package, the equipment RFP (hereinafter referred to as RFP No. 1), was for acquisition of electronic equipment, and Inter'L/Wayne Wheeler were not bidders on RFP No. 1. No other RFP included the false and mistaken reference.

Attached hereto as Exhibit 4 is a true and correct copy of the District's initial version of RFP No. 1 for the equipment. It does mistakenly indicate on Page 4 that Inter'L/Wayne Wheeler are to receive copies of proposals. This document was disseminated by the District on December 20, 2001. The error was identified when bidders subsequently called, inquiring whether a copy of their proposals had to be sent to Inter'L/Wayne Wheeler. All bidders on RFP No. 1 were told not to send copies of bids to Inter'L/Wayne Wheeler, and the bid closing on RFP No. 1 was extended to January 7, 2002, with the RFP language being corrected by addendum to remove the erroneous reference to Inter'L/Wayne Wheeler. A true and correct copy of the corrected RFP is attached as Exhibit 5.

The corrected bid process closed on January 7, 2002. Two bidders submitted proposals. Inter'L/Wayne Wheeler were not bidders on RFP No 1. A contract was awarded off of RFP No. 1 to SBC/Datacomm. None of the District's other three RFP's for funding year 2002 contained the error, and they proceeded to bid opening and contract award on schedule. Inter'L/Wayne Wheeler was a bidder on one of the other packages and, as low bidder, received a contract. Inter'L/Wayne Wheeler were not listed as contacts or otherwise in the RFP leading to the contract they were awarded.

The answer to the question of how the names of Inter'L/Wayne Wheeler came to appear on RFP No. 1 in funding year 2002 is simple, and innocent. Mr. Wheeler had been, in prior years, a consultant to the District in connection with some of the District's proposed technology projects. He had a role in some prior years' activity, which role could have included receiving copies and assisting in bid evaluation. Documentation to that effect was prepared in the expectation of the work being funded for year 2001, the funding year prior to the year in question. However, the District was not funded for year 2001, and did not have, or use Inter'L/Wayne Wheeler during a bid process. The documents for year 2001 were, however, retained by the District.

In funding year 2002, the subject year, the District did not use Inter'L/Wayne Wheeler as a consultant for its technology projects. The District, however, in preparing RFP No. 1, and because the technology plan had not changed, used as a "form" in year 2002 the existing year 2001 document where Mr. Wheeler had been consultant. The form was slightly edited to apply to year 2002 and became part of RFP No. 1 without anyone catching and removing the erroneous reference to Inter'L/Wayne Wheeler. This was a clerical error, and one that was identified and corrected prior to the completion of the 2002 bidding process on RFP No. 1.

It is important to note that there was not even a false appearance of an impropriety at the time the District's bidding process concluded and the contract was awarded. It is also prudent to mention there never was even an appearance of impropriety in RFP No. 1 because Inter'L/Wayne Wheeler were not bidders on RFP No. 1, nor did they ever participate in any way in the bid process on RFP No. 1.

District's employee was always the contact person:

The charging Reports contain the following language:

The applicant cited From [sic] 470 # 428350000384140 and indicated in Block 2 Item 10 that they had an RFP and that it was available on the WEB or via the contact person in Block 1 Item 6.

This language seems to indicate that the District identified Inter'L/Wayne Wheeler in the 470 Form as the contact person. That is false. It is important to note that Bonnie Armendariz, District employee, was the only contact ever listed in Block, 1 Item 6, of the District's Form

470. Ms. Armendariz was, also, always listed on RFP No. 1 as a contact for receipt of bids. Neither Inter'L nor Mr. Wheeler were ever listed on the District's 470 or 471 Forms as a contact person. True and correct copies of the District's Forms 470 and 471 are attached hereto as Exhibits 6 and 7, respectively. As clearly shown, above, Inter'L/Wayne Wheeler were mistakenly listed, then removed, in one of four RFP's from the District. Inter'L/Wayne Wheeler were not authorized to, nor did they ever act in any way as a contact person for the District in funding year 2002.

It is important to take special note of the District's Form 470, where only Bonnie Armendariz was ever listed as contact person. Nobody looking at the District's Form 470 would know anything about Inter'L/Wayne Wheeler. The only bidders who would ever see anything referencing Inter'L / Wayne Wheeler were those bidders who got the initial erroneous copy of RFP No. 1. Inter'L/Wayne Wheeler were not part of that group. They did not request copies of RFP No. 1. There could be no appearance of impropriety as the erroneously mentioned organization was not one of the bidders on that contract. Assuming for the sake of argument that Inter'L/Wayne Wheeler had taken some role in the District's bid process on RFP No. 1, there would not have been any conflict, as they were not bidders on RFP No. 1 and did not seek or get that contract.

The erroneous, temporary reference to Inter'L/Wayne Wheeler on the RFP does not even create a conflict of interest.

Contrary to the position taken by USAC/SLD, the mere listing of Inter'L/Wayne Wheeler, by mistake or otherwise, does not give rise to even an appearance of a conflict of interest. It must be accepted that government consultants, employees, and others are permitted to receive contracts from the government, so long as they do not participate in the award, or put another way, so long as the contract does not affect the individual's duties with the government. The rule is clearly stated in the case of *Michigan Steel Box Co. v. United States* (1914) 49 Ct. Cl. 421. California law is consistent with this rule, having been based, in part, on that holding.

The California Supreme Court in the case of *Thomson v. Call* (1985) 38 Cal.3d 633 noted that public officers are denied the right to make contracts in their official capacity with themselves or to become interested in contracts thus made, and further noted that California Government Code Section 1090 forbids public officers from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. The *Thompson* case cites the case of *Stigall v. City of Taft* (1962) 58 Cal.2d 565, which held that making a contract includes the awards process and preparations for the contracting process. The *Stigall* case relied in no small way on the federal case of *United States v. Mississippi Valley Generating Co.* (1960) 364 U.S. 520.

Cited in the *Mississippi Valley* case was the case of *Rankin v. United States* (1943) 98 Ct. Cl. 357, which in turn cited an earlier federal case called *Michigan Steel Box Co. v. United States* (1914) 49 Ct. Cl. 421, 440, where it is stated:

Recognizing that the freedom of contract should not be too much abridged, the law does not prohibit a Government official from contracting with or becoming interested in a contract with the Government which does not affect the duties imposed upon him by his office, but where the matters contemplated by the contract or the execution of it on the Government's part are directly imposed upon him the official may not assume the dual relation of acting as the representative of the Government and for himself or his associates.

These cases, and California Government Code Section 1090, consistently find that a contract, awarded to anyone involved in the making of the contract, is void. Other cases interpreting this rule note that the contract is not void if awarded to a governmental employee or agent who did not participate in the making of the contract.² What is significant in these rulings is the connection between the process of making the contract, and receiving that same contract. It should be obvious that contracts are treated separately and distinctly from each other. The fact a party participates in the making of contract "One" does not render contract "Two" void unless the party participates in the making of contract "Two." This would be the exact situation we have in this case, if Inter'L/Wayne Wheeler had actually been involved in the making of RFP No. 1, instead of only mistakenly referenced.

USAC/SLD asserts that because Inter'L/Wayne Wheeler was erroneously listed in RFP No. 1 as having participated in the making of the RFP No. 1 contract, they are disqualified from receiving a contract on RFP No. 2, the RFP on which they submitted a bid. Such is not the case. USAC/SLD appears to assert Inter'L/Wayne Wheeler was listed on the District's Form 470, but such is not the case. (See Exhibit 6.) Only the District's employee is listed on the Form 470. Inter'L/Wayne Wheeler were bidders on RFP No. 2, but they did not participate in the making of the contract on RFP No. 2.

In short, Inter'L/Wayne Wheeler did not participate in the making of a contract to themselves, so there is no conflict, and should be no basis in law or fact for the requested funding adjustments or reimbursements. Also, since the Form 470 did not list Inter'L/Wayne Wheeler as contacts for the District, nor was there any conflict, the Form 470 itself is not "tainted." If anything was tainted, it could only have been the innocently, mistakenly erroneous RFP No. 1

² We can ignore the different rule applicable to members of governing boards that award contracts - the board, in such cases, is precluded from awarding a contract if any of its members have a financial interest in the contract, whether or not the member participates in the making of the contract. Those circumstances are not present here.

process, and that mistake was corrected prior to close of the RFP No. 1 bid, and the alleged "taint" removed.

Despite the clerical error, temporarily giving the false appearance of a relationship, there was no actual relationship, and could be no impropriety or conflict of interest for RFP No. 1:

The charging Reports contain the following language:

By having Inter'L Corporation's employee listed as a contact person on its Request for Proposal, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder. This impaired the applicant's ability to hold a fair and open competitive bidding process

This is neither factually accurate, nor the law. As shown above, the "service provider" was not a bidder on RFP No. 1. Inter'L/Wayne Wheeler were bidders on another RFP, one which never contained the erroneous reference to them as authorized to receive a copy of the bids. In fact, Inter'L/Wayne Wheeler did not participate in the RFP No. 1 competitive bidding process as a bidder.

Of more significance are the allegations that the District surrendered control of the bidding process, and that the District's ability to hold a fair and open competitive bidding process was impaired. These, too, are factually and legally inaccurate. The alleged relationship between Inter'L/Wayne Wheeler and the District's bidding process simply did not exist. Inter'L/Wayne Wheeler was not, in fact, the District's contact person, nor authorized to receive copies of proposals on any of the District's RFP's, regardless of the temporarily erroneous RFP No. 1 information. Nor were they, in any way, involved on behalf of the District in the 2002 year bidding process. They did not participate in the process of reviewing proposals, nor did they participate in the preparation of the RFP's. The actual facts were that Inter'L/Wayne Wheeler were not involved in any way in the bid process, except as bidders on an unrelated RFP. Regardless of what the temporary clerical error may have indicated, there was no conflict of interest because there was no relationship between Inter'L/Wayne Wheeler and the District's bidding process in year 2002. The District could not possibly have surrendered control of the process, as there was nobody to whom control could have been surrendered.

In fact, the District was in control of the bid process at all times, except perhaps for the temporary slip in allowing the erroneous RFP to go out, and also, perhaps, in failing to maintain sufficiently accurate records to satisfy the auditors. It is not that records were not kept, it's that too many records were kept, and insufficiently labeled to appropriately discriminate between final documents and preliminary documents.

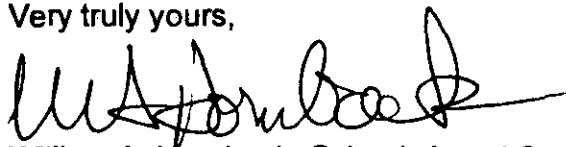
If the alleged "taint" had existed, it would not have "tainted" the entire Form 470:

The position taken by USAC/SLD is that the alleged "taint" of the equipment bid process, which allegation has been shown to lack substance, would have tainted the entire year's process, including everything listed on the District's Form 470. It is only the Form 470 that links the four RFP's from the District for year 2002. It is important to note, again, that the Form 470 did not contain any reference, at any time, to Inter'L/Wayne Wheeler. If any process was "tainted," it could only have been the process of RFP No. 1, via the temporary clerical error in listing them as authorized to receive copies of bids. None of the other RFP's contained the temporary clerical error. At no time did the District surrender control of its bid process to the prior consultant. It is doubtful whether any of the other bidders on the other RFP's even knew about the temporary clerical error in the equipment RFP.

Auditors Errors and Omissions:

Since this is so clearly an innocent, temporary clerical error, which never gave rise to an actual or apparent conflict of interest, and which temporary clerical error was corrected before the end of the subject bid process, it is sad that the auditing firm assigned to audit the District did not care about the truth and did not spend the five minutes it would have taken to clear up their misunderstanding. The District offered the referenced documentation and explanation to the auditing firm, but the firm refused to accept the offered documents and information. It is clear that, had they listened and reviewed the information, no audit exception could have been found, nor would the USAC/SLD have requested a refund, nor would this appeal have been necessary.

Very truly yours,



William A. Hornback, Schools Legal Service
Attorneys for Delano Joint Union High School District

The foregoing Letter of Appeal has been reviewed and is approved for submission on behalf of the Delano Joint Union High School District.



Bonnie Armendariz - IT Director
Delano Joint Union High School District

Exhibit #1

OVERVIEW OF FUNDING REQUEST NUMBERS

Funding Request Number	Service Provider	Amount of Recovery Sought
848089	Cityroots, Inc.	\$18,000.00
848138	Cityroots, Inc.	\$9,000.00
848176	Cityroots, Inc.	\$9,000.00
848212	Cityroots, Inc.	\$4,500.00
848274	Cityroots, Inc.	\$18,000.00
Subtotal		\$58,500.00
847714	Inter'L	\$11,025.00
847749	Inter'L	\$11,025.00
847787	Inter'L	\$6,300.00
848332	Inter'L	\$22,414.07
848357	Inter'L	\$10,854.23
848391	Inter'L	\$1,541.50
848423	Inter'L	\$2,002.78
848466	Inter'L	\$20,487.43
Subtotal		\$86,010.01
847842	Hewlett Packard Company	\$63,803.13

847868	Hewlett Packard Company	\$20,518.55
847900	Hewlett Packard Company	\$23,211.55
847949	Hewlett Packard Company	\$12,837.88
847994	Hewlett Packard Company	\$63,811.93
Subtotal		\$184,183.04
847145	SBC Datacomm, Inc.	\$66,406.95
847222	SBC Datacomm, Inc.	\$29,803.53
847323	SBC Datacomm, Inc.	\$606,535.52
847379	SBC Datacomm, Inc.	\$1,061,169.68
847428	SBC Datacomm, Inc.	\$116,011.71
847525	SBC Datacomm, Inc.	\$36,552.91
847607	SBC Datacomm, Inc.	\$173,470.14
847640	SBC Datacomm, Inc.	\$1,083,709.57
Subtotal		\$3,173,660.01
Grand Total	All Providers	\$3,502,353.06

**DETAILED LISTING OF FUNDING REQUEST NUMBERS AND OTHER INFORMATION
SORTED BY SERVICE PROVIDER NAME**

SPIN Name: Cityroots, Inc.
Contact: Deborah Lango
Page 1 of 1

Funding Request No.	848089	848138	848176	848212	848274
Serv. Ordered	Internal Cnctns.	Internal Cnctns.	Internal Cnctns.	Internal Cnctns	Internal Cnctns
SPIN	143023779	143023779	143023779	143023779	143023779
Provider Name	Cityroots, Inc.	Cityroots, Inc.	Cityroots, Inc.	Cityroots, Inc.	Cityroots, Inc.
Contract No.	N/A	N/A	N/A	N/A	N/A
Billing Acct. No.	661-725-4000	661-725-4000	661-725-4000	665-725-4000	661-725-4000
Site Identifier	143847	143847	143847	143847	143847
Orig. Fund Commitment	\$18,000.00	\$9,000.00	\$9,000.00	\$4,500.00	\$18,000.00
Comm. Adj.	\$18,000.00	\$9,000.00	\$9,000.00	\$4,500.00	\$18,000.00
Adj. Fund. Commitment	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Funds to Date	\$18,000.00	\$9,000.00	\$9,000.00	\$4,500.00	\$18,000.00
To Be Recovered	\$18,000.00	\$9,000.00	\$9,000.00	\$4,500.00	\$18,000.00

SPIN Name: Inter'L
 Contact: Wayne Wheeler
 Page 1 of 2

Funding Request No.	847714	847749	847787	848332	848357
Contract No.	DHS.010102D8	DHS.010102D8	DHS.010102D8	DHS.010901D8	DHS.010901D8
Serv. Ordered	Internal Cnctns.	Internal Cnctns.	Internal Cnctns.	Internal Cnctns.	Internal Cnctns.
Billing Acct. No.	661-725-4000	661-725-4000	661-75-4000	665-725-4000	661-725-4000
Orig. Fund Commitment	\$11,025.00	\$11,025.00	\$6,300.00	\$22,414.07	\$10,854.23
Comm. Adj.	\$11,025.00	\$11,025.00	\$6,300.00	\$22,414.07	\$10,854.23
Adj. Fund Commitment	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Funds to Date	\$11,025.00	\$11,025.00	\$6,300.00	\$22,414.07	\$10,854.23
To Be Recovered	\$11,025.00	\$11,025.00	\$6,300.00	\$22,414.07	\$10,854.23

SPIN Name: Interl

Contact: Wayne Wheeler

Page 2 of 2

Funding Request No.	848391	848423	848466
Contract No.	DHS.010901D8	DHS.010901D8	DHS.010901D8
Serv. Ordered	Internal Cnctns.	Internal Cnctns.	Internal Cnctns.
Billing Acct. No.	661-725-4000	661-725-4000	661-725-4000
Orig. Fund Commitment	\$1,541.50	\$2,002.78	\$20,487.43
Comm. Adj.	\$1,541.50	\$2,002.78	\$20,487.43
Adj. Fund Commitment	\$0.00	\$0.00	\$0.00
Funds to Date	\$1,541.50	\$2,002.78	\$20,487.43
To Be Recovered	\$1,541.50	\$2,002.78	\$20,487.43

SPIN Name: Hewlett Packard Company

Contact: Lisa Ford

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Funding Request No.	847842	847868	847900	847949	847994
Serv. Ordered	Internal Cnctns.	Internal Cnctns.	Internal Cnctns.	Internal Cnctns	Internal Cnctns
SPIN	143007617	143007617	143007617	143007617	143007617
Provider Name	HP	HP	HP	HP	HP
Contract No.	CMAS	CMAS	CMAS	CMAS	CMAS
Billing Acct. No.	661-725-4000	661-725-4000	661-725-4000	661-725-4000	661-725-4000
Site Identifier	143847	143847	143847	143847	143847
Orig. Fund Commitment	\$68,304.95	\$23,080.86	\$25,008.66	\$13,736.48	\$68,304.95
Comm. Adj.	\$68,304.95	\$23,080.86	\$25,008.66	\$13,736.48	\$68,304.95
Adj. Fund. Commitment	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Funds to Date	\$63,803.13	\$20,518.55	\$23,211.55	\$12,837.88	\$63,811.93
To Be Recovered	\$68,803.13	\$20,518.55	\$23,211.55	\$12,837.88	\$63,811.93

SPIN Name: SBC Datacomm, Inc.

Contact: Alice Martinez

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Funding Request No.	847145	847222	847323	847379	847428
Serv. Ordered	Internal Cnctns.	Internal Cnctns.	Internal Cnctns.	Internal Cnctns	Internal Cnctns
SPIN	143004812	143004812	143004812	143004812	143004812
Provider Name	SBC	SBC	SBC	SBC	SBC
Contract No.	CALNET	CALNET	CALNET	CALNET	DCP
Billing Acct. No.	661-725-4000	661-725-4000	661-725-4000	665-725-4000	661-725-4000
Site Identifier	143847	143847	143847	143847	143847
Orig. Fund Commitment	\$66,407.08	\$29,804.38	\$606,993.54	\$1,088,696.78	\$126,025.21
Comm. Adj.	\$66,407.08	\$29,804.38	\$606,993.54	\$1,088,696.78	\$126,025.21
Adj. Fund Commitment	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Funds to Date	\$66,406.95	\$29,803.53	\$606,535.52	\$1,061,169.68	\$116,011.71
To Be Recovered	\$66,406.95	\$29,803.53	\$606,535.52	\$1,061,169.68	\$116,011.71